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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,124	04/01/2004	Yuch Wen Hsiang	MR1957-871	8035
4586	7590	10/19/2005		
ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DRIVE-SUITE 101 ELLICOTT CITY, MD 21043			EXAMINER ENSEY, BRIAN	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,124

Applicant(s)

HSIANG, YUEH WEN

Examiner

Brian Ensey

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5 is/are rejected.
- 7) ☒ Claim(s) 4 and 6-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: The applicant should be consistent in naming item 3, see page 4, line 6 “earphone body 3, a silica cover 3.”.

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: See item 651 in figures 4-7. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. U.S. Patent Application Publication No. 2004/0215053 in view of Martin U.S. Patent No. 2,529,562.

Regarding claim 1, Jorgensen discloses an ergonomic housing, comprising: an housing body (parts 1 and 2 comprise the housing body as a whole) having a side portion (part 2 for fitting into the ear); a silica cover (10) covering the side portion of the housing body; and a control device communicating with an inside of the silica cover and disposed in the housing body, the control device having a channel (part 20 is an expandable chamber for controlling the flow into expandable portion 3) with a material formed therein (gas, liquid gel or foam), wherein a first control device (parts 22, 23 and 25, a knob operating a threaded rods to move a piston 21 to control the flow of material into the elastic chamber) with a part received in the channel for controlling flow of the material into the inside of the silica cover from the channel, and a second control device (parts 22, 23, 24 and gear wheels, pulling string 24 disengages gear wheels to allow material in expansible portion return piston to a disengaged position and deflate the expandable silica cover) with a part received in the channel for controlling returning of the material from the channel back to the inside of the silica cover (See Figs 1 and 2 and paragraphs 0012, 0022-0024, 0048-0050 and 0059). Jorgensen does not expressly disclose the housing is an earphone housing. However, Jorgensen teaches the housing is used in hearing aids including

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Behind The Ear (BTE) type and for expansible receiver modules and Martin teaches an adjustable, expansible earpiece (35) for maintaining a good seal for users with ears of different sizes (See Figs. 1 and 2 and col. 2, lines 20-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the ergonomic housing of Jorgensen in the earpiece of Martin for improved comfort to user's with different size ears.

Regarding claim 2, the combination of Jorgensen in view of Martin further discloses the earpiece body (1) has a remaining space formed therein and the control device is received in the remaining space (The earpiece body 1 of Martin provides sufficient space in their expansible tube area and ear cup to house the control device).

Regarding claim 3, the combination of Jorgensen in view of Martin further discloses the earphone body comprises a through hole communicating with the remaining space, and the control device (22, 24,25) communicates with the inside of the silica cover through the through hole (The control device inherently passes through a hole in the earpiece body for manual operation).

Regarding claim 5, the combination of Jorgensen in view of Martin further discloses the control device is a gas valve-type control device (See Jorgensen Fig. 1 and paragraph 0022).

Allowable Subject Matter

Claims 4 and 6-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Ensey whose telephone number is 571-272-7496. The examiner can normally be reached on Monday - Friday 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(571) 273-8300, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to: Customer Service Window, Randolph Building, 401 Dulany Street, Arlington, VA 22314

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SINH TRAN
SUPERVISORY PATENT EXAMINER**

BKE
October 11, 2005